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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

THE CLASS OF 48+1 AND THE
INTERVENOR PLAINTIFFS, SUCCESSORS
IN INTEREST TO MITCHELL G. KING, JR.,
Petitioners,
v.
MILTON GREENBLATT, M.D., LESLIE TAYLOR,
CHARLES W. GAUGHN AND M.C.I. BRIDGEWATER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the enactment of a state statute, 1993 Massachusetts Acts, Chapter 489, relating to a Treatment Center for civilly committed patients, is a "significant change in law" under *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992), warranting modification of a federal consent decree enforcing federal constitutional rights.

LIST OF PARTIES

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case.

A. The "Class of 48+1", who are patients at the Treatment Center for Sexually Dangerous Persons in Bridgewater, Massachusetts, and who were permitted by the district court to oppose modification of the Consent Decree at issue in this case.

B. The "Intervenor Plaintiffs", a group of patients at the Treatment Center who were permitted by the district court to intervene in this case and who have opposed modification of the Consent Decree.

C. All present or future civilly committed patients at the Treatment Center who stand as successors in interest to the original plaintiff in this matter, Mitchell G. King.

D. The current Commissioner of the Massachusetts Department of Mental Health, who stands as a successor in interest to one of the original defendants.

E. The current Superintendent of the Massachusetts Correctional Institution at Bridgewater, who stands as a successor in interest to one of the original defendants in this matter.

F. The Massachusetts Department of Correction.

G. The Commonwealth of Massachusetts.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

MITCHELL G. KING, JR., ET AL, Petitioners

VS.

MILTON GREENBLATT, M.D., ET AL, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.[1]

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1 The original plaintiff, Mitchell G. King, Jr., is no longer a patient at the Treatment Center. In 1988, a group of six (later seven) patients ("the Intervenor Plaintiffs") were permitted to intervene in this action as plaintiffs when the respondents first brought a motion seeking relief from the Consent Decree at issue here. The respondents' motion was denied. In 1994, the respondents moved again to modify the Consent Decree. A group of patients known as the "Class of 48+1" was permitted by the District Court for the District of Massachusetts to oppose respondents' motion to modify, because the Consent Decree remains in force, benefits all the patients at the Center, and the patients have suffered "some threatened or actual injury resulting from the putatively illegal action." *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973). The Class of 48+1 and the Intervenor Plaintiffs will be referred to herein collectively as "the petitioners".

OPINIONS BELOW

On January 21, 1994, the respondents filed a motion to modify a Consent Decree ("the Consent Decree") which pertains to the administration and operation of the Massachusetts Treatment Center for Sexually Dangerous Persons ("Treatment Center") in Bridgewater, Massachusetts. Relying solely on a recent change in state law, enacted at the urging of the respondents, respondents sought to modify the Consent Decree so as to transfer primary responsibility and authority for the Treatment Center from the Massachusetts Department of Mental Health ("DMH") to the Massachusetts Department of Correction ("DOC").

The district court denied the respondents' Rule 60(b) motion on the ground that they had not met their burden under *Rufo v. Inmates of Suffolk County Jail*, 508 U.S. 367 (1992), of proving that a significant change in law or fact warranted modification of the Consent Decree. The respondents appealed to the United States Court of Appeals for the First Circuit. On April 6, 1995, the First Circuit issued an opinion finding that the enactment of a subsequent state statute was a significant change in law under *Rufo*. The First Circuit reversed the district court's denial of respondents' motion and remanded the case to the district court for proceedings under the second prong of the *Rufo* test, i.e., whether the modifications requested are "suitably tailored" to the change in circumstances.

The opinion of the United States Court of Appeals for the First Circuit (Appendix A) is reported at *King v. Greenblatt*, 52 F.3d 1 (1st Cir. 1995). The oral opinion of the United States District Court for the District of Massachusetts (Appendix B) is unreported. Both decisions will be cited herein as (App. ___).

JURISDICTION

This petition seeks review of a decision of the United States Court of Appeals for the First Circuit made and entered on April 6, 1995. Jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1). The petition for Writ of Certiorari is timely filed pursuant to 28 U.S.C. § 2101(c).[2]

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2 Although the First Circuit remanded the case for further proceedings under the second prong of *Rufo*, its decision under the first prong of the *Rufo* test is ripe for review. This Court has routinely granted certiorari to review non-final dispositions. *See, e.g., Stafford v. Briggs*, 444 U.S. 527, 532 (1980) (granting cert. to review order upholding personal jurisdiction and venue, and remanding for trial); *FPC v. Conway Corp.*, 426 U.S. 271, 276 (1976)(review of Court of Appeals decision remanding for further administrative proceeding); C. Wright & A. Miller, Federal Practice & Procedure, §4036, at 30-31 n.57 (2d Ed. 1988), and case cited therein. As discussed more fully in Section IV, *infra*, there are compelling reasons why the Court should review the First Circuit's decision now. First, the district court has indicated that it is highly likely it will grant DOC control of the Treatment Center in one form or another, a decision it feels is mandated in light of the First Circuit's decision under the first prong of *Rufo*. Second, regardless of how the district court rules, the First Circuit's decision has established the dangerous precedent that a state may avoid its responsibilities under a Consent Decree by enacting legislation. This is not only contrary to the Supremacy Clause of the United States Constitution, but it will have the practical and unwanted affect of chilling settlements in federal litigation.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The Supremacy Clause of the United States Constitution, Article VI, clause 2, which states as follows:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

This case was filed in the United States District Court for the District of Massachusetts by a Treatment Center patient who sought federal relief for various constitutional violations allegedly committed at the Treatment Center by DOC. In his Amended Complaint, filed in 1972, the original plaintiff Mitchell King asserted claims based on the federal Constitution, including equal protection and due process claims under the Fifth Amendment, and a cruel and unusual punishment claim under the Eighth Amendment. The basis of each of these claims was that Mr. King was civilly committed to the Treatment Center for an indefinite period pursuant to Massachusetts General Laws chapter 123A ("M.G.L. c. 123A"), and therefore entitled to the constitutional protections appropriate to that status, including confinement in the least restrictive conditions possible, clinical treatment rather than punishment, and handling substantially identical to that afforded other civilly committed patients in the Commonwealth. Mr. King *did not* assert any claim for relief under state law. (C.A. App. 14-24).[3]

Further, in his Amended Complaint, Mr. King made it clear that DOC was the agency which was infringing upon, ignoring, and undermining his federal constitutional rights,

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3 The Massachusetts Supreme Judicial Court has repeatedly noted that indefinite civil commitment under M.G.L. c. 123A can be upheld under federal constitutional standards only so long as it is remedial and not penal. *See Page v. Commonwealth*, 159 N.E.2d 82, 85 (Mass. 1959) ("confinement [of civilly committed patients] in a prison which is undifferentiated from the incarceration of convicted criminals is not remedial so as to escape constitutional requirements of due process"); *Commonwealth v. Major* 241 N.E.2d 822, 823-4 (Mass. 1968) (c. 123A does not permit "punitive treatment or confinement under any prison conditions, except such as are reasonably required for security. . . . [I]mplicit in the statute and its purpose is the obligation to provide an environment conducive to a cure or an alleviation of the dangerous trait").

including his right to appropriate clinical handling (which, according to DMH, did not include the seclusion to which he was subjected). For example, Mr. King alleged that: DOC officers had placed him in solitary confinement, with subsequent approval by their DOC supervisors and without consulting DMH staff (Amended Complaint ¶¶ 8-9; C.A. App. 16); DOC brought him before a disciplinary board comprised entirely of DOC staff who were predisposed to believe the DOC guards (Amended Complaint ¶ 11E; C.A. App. 18); DOC personnel punished him (Amended Complaint ¶ 11I; C.A. App. 18); DOC deprived him of therapy recommended for him by DMH staff (Amended Complaint ¶ 15; C.A. App. 19-20); DMH in general was opposed to the use of solitary confinement and did not use it as a disciplinary device in any state mental hospital (Amended Complaint ¶ 17; C.A. App. 20); and Dr. Kozol (a licensed psychiatrist and DMH employee who was then the Administrator of the Treatment Center) specifically believed that solitary confinement was harmful to Mr. King and interfered with his treatment (*Id.*). Mr. King alleged that the result of DOC's *de facto* control of the Treatment Center was constitutional harm.

a. The 1974 Consent Decree.

Following the filing of the Amended Complaint, the district court (Wyzanski, J.) conducted a hearing regarding Mr. King's allegations. (C.A. App. 25). At or about the same time, the parties agreed to paragraph I of Mr. King's motion for summary judgment. (*Id.*)

Based on the stipulations and evidence heard by Judge Wyzanski, the district court entered a Consent Decree in this action on June 3, 1974. The Consent Decree, which had been agreed upon by the parties, provides:

1. The Treatment Center at MCI Bridgewater shall be treated as a facility of the Department of Mental Health.

2. Primary responsibility and authority for the Treatment Center shall be exercised by the Department of Mental Health.

3. All personnel at the Treatment Center (clinical, custodial, administrative) shall be subject to the control of the Commissioner of Mental Health with respect to the handling of patients.

4. Custodial personnel, but not patients, shall be under the administrative, operational and disciplinary control of the Commissioner of Correction.

5. The Department of Mental Health shall exercise the responsibility and authority set forth in subparagraph 2 above so that patients at the Treatment Center should have the least restrictive conditions necessary to achieve the purposes of commitment . . . .

6. These said Departments will also act in concert to draw up and promulgate certain rules and regulations to apply to the patients at the Treatment Center. The purpose of these rules and regulations shall be to implement the provisions contained in this decree . . .

(C.A. App. 25-27).

These paragraphs were included in the Consent Decree to remedy DOC's alleged constitutional violations by ensuring DMH's primary role, and by precluding DOC from having any role at the Treatment Center other than a custodial one. *See, e.g., Williams v. Lesiak*, 822 F.2d 1223, 1227-1230 (1st Cir. 1987) (reviewing a nearly identical Treatment Center Consent Decree and noting: (i) that the decree was "based on rights guaranteed by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution[;]" and (ii) that "the first four paragraphs of the decree are devoted to

stressing that primary authority over patients at the Treatment Center is to be vested in the Department of Mental Health"). Indeed, paragraph 4 of the decree specifically excludes patients from the "administrative, operational and disciplinary control of the Commissioner of Correction." *Id.* at 1230.

b. Construction of the New Treatment Center and Closure Thereof to New Civil Commitments.

In 1986, a new, state-of-the-art Treatment Center building was placed into operation, having been constructed to meet the requirements of another Consent Decree governing the facility. (C.A. App. 271).[4] Beginning in that year, and continuing annually thereafter, the executive branch filed legislative bills seeking, among other things, to transfer control of the Treatment Center from DMH to DOC. Until 1994, none of those bills was enacted.

In 1990, legislation was passed that curtailed new civil commitments to the Treatment Center. *See* 1990 Mass. Acts ch. 150, §§ 104, 304 (closing the Treatment Center to new admissions and repealing M.G.L. c. 123A, §§ 3-7). The effect of this legislation was that the consent decrees entered in this and related cases became applicable only to a fixed group of patients already committed to the Treatment Center -- a group whose numbers will slowly dwindle over time due to discharges and death.

c. The 1994 Amendments to M.G.L. c. 123A.

In 1994, upon the continued urging of the executive branch, the legislature finally enacted a statute that purports, among other things, to transfer exclusive control of the Treatment Center to the Commissioner of Correction. *See* 1993 Massassachusetts Acts, Chapter 489, § 2 enacted January 14, 1994 ("Chapter 489"), amending M.G.L. c.

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4 *See Williams v. Lesiak*, 822 F.2d 1223 (1st Cir. 1987), for a description of the consent decrees entered by the district court in that case.

123A, § 2. The terms of Chapter 489 directly contradict the Consent Decree entered in this case by providing:

> The Commissioner of Correction shall maintain *subject to the jurisdiction of the department of correction* a treatment program or branch thereof at a correctional institution for the care, custody, treatment and rehabilitation of persons and judicated [sic.] as being sexually dangerous. *Id.* (emphasis added).

d. The Respondents' Motion to Modify the Consent Decree.

On January 21, 1994, the respondents filed a Motion to Modify Consent Decree ("the motion"). (C.A. App. 35-7). The requested modifications would have permitted transfer of the Treatment Center from DMH's to DOC's control. The respondents' motion was filed pursuant to Fed. R. Civ. P. 60(b), and was predicated entirely on the enactment of Chapter 489. *See* C.A App. 56 ("here . . . modification . . . is requested due to a change in statutory law").[5] In their motion papers, the respondents simply made the conclusory assertion that modification was "necessary to conform the terms of the Consent Decree" to the terms of Chapter 489. (*See* C.A. App. 36). The respondents did not submit any testimonial or documentary evidence in support of their motion, and did not request an evidentiary hearing.

e. The District Court's Denial of the Motion.

On May 27, 1994, the district court denied the respondents' motion. The district court concluded that the respondents had "not sustained their burden of showing a significant change in law or fact under *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992). (C.A. App. 142).

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5 It appears that the respondents relied, more precisely, on that portion of Rule 60(b)(5) which indicates that modification may be appropriate when "it is no longer equitable that the judgment should have prospective application." (*See* C.A. App. 55).

In making its ruling, the district court stated:

> I do find that the consent decrees sought to address federal constitutional violations articulated by *King* and *Williams*.
>
> A critical component of the remedy provided by the consent decrees was that the Department of Mental Health was in control of the Treatment Center which was to provide, in part, a check on the Department of Corrections, which compromised treatment.
>
> I conclude that the Department of Mental Health is an essential part of the decree, and on the record before me at this time, the Department of Corrections has done nothing yet that I can see which warrants my placing confidence in its ability to deliver treatment, patient treatment.
>
> I conclude at this time that Department of Corrections' control of the Treatment Center compromises the federal constitutional remedy which the Consent Decree sought to impose, and would compromise the federal constitutional rights which the Consent Decrees sought to protect.

(C.A. App. 142-3; App. 41).

The respondents appealed from the district court's denial of their motion, and on April 6, 1995 the First Circuit reversed the district court's ruling and found that Chapter 489 was a significant change in law under *Rufo*. (App. 11) In its decision, the First Circuit acknowledged several critical points: (1) the Consent Decree is designed to vindicate federal constitutional rights, (2) the conflict between the Consent Decree and the subsequently enacted state statute is "real", and (3) the structural terms of the Consent Decree serve the goal of keeping DOC, the offending actor, out of DMH's province. (App. 10) Despite

acknowledging these points, the First Circuit's decision gave free reign to "federalism concerns" and ignored this Court's holdings that under the Supremacy Clause a state statute cannot thwart a federal order enforcing federal constitutional rights. (App. 10).

REASONS FOR GRANTING THE WRIT

I. THE FIRST CIRCUIT'S DECISION THAT A CHANGE IN STATE LAW IS SUFFICIENT TO MODIFY A FEDERAL CONSENT DECREE PROTECTING FEDERAL CONSTITUTIONAL RIGHTS CONFLICTS WITH PRIOR DECISIONS OF THIS COURT.

This Court has expressly held that a state statute that has the effect of thwarting a federal court order enforcing federal rights cannot survive the command of the Supremacy Clause of the United States Constitution. *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 695 (1979)(state law that prohibits compliance with federal decree cannot survive the command of the Supremacy Clause); *Cooper v. Aaron*, 358 U.S. 1, 18 (1958)(if states are allowed to set aside judgments of federal courts, "the constitution itself becomes a solemn mockery.") (citations omitted). Thus, where there is a direct conflict between the provisions of a consent decree which enforces federal constitutional rights and the terms of a subsequently enacted state statute, the Supremacy Clause resolves the conflict and dictates that the provisions of the consent decree must take precedence. *Washington*, 443 U.S. at 695; *Cooper*, 358 U.S. at 18.[6]

There is no dispute that the Consent Decree here *is* a federal court order enforcing federal constitutional rights. The Amended Complaint which forms the underlying basis for the Consent Decree asserts claims solely under the U.S. Constitution, and under federal statutory provisions. (C. A.

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6 While a consent decree is in part an agreement reached between parties, once entered it has the force of a judgment or decree. *See Rufo*, 502 U.S. at 378 ("it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.") (citations omitted).

App. 14-24).[7] There are *no* state claims asserted. Thus, the Consent Decree entered into between the parties exists solely to protect the patients' federal constitutional rights.

Moreover, both lower courts found or conceded as much. As noted earlier, in denying the respondents' motion to modify the Consent Decree, the district court expressly found that the decree sought to "address federal constitutional violations" and that DMH control of the Treatment Center was a "critical component" and "essential part" of the decree. (App. 41). Similarly, while the First Circuit noted that it would have eschewed the words "essential" and "critical", it did not contest the fundamental finding that the Decree's provision for DMH control was intended to vindicate the patients' federal constitutional rights. (App. 10). Indeed, the First Circuit found that the terms of the Consent Decree at issue here were "clearly, not just arguably, related to the *constitutional* remedy provided by the decree." *Id.* (emphasis added).

Massachusetts statute Chapter 489, enacted in 1994, expressly provides that the Treatment Center will be operated and controlled by DOC. This directly conflicts with the Consent Decree's provisions which vest control with DMH -- provisions which, as noted, both lower courts have conceded vindicate federal constitutional rights.[8]

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7 The first paragraph of the Amended Complaint explicitly states, "This action arises under 42 U.S.C. Sec. 1983, the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, and 28 U.S.C. Sec. 2201-02. Jurisdiction hereof is conferred upon this Court by 28 U.S.C. Sec. 1343." (C.A. App. 14).

8 The First Circuit acknowledged that the conflict between c. 489 and the Consent Decree is real, but found that it is "not so fundamental that c. 489 necessarily thwarts the overall goals of the King litigation." (App. 10). Incredibly, it reached this decision even though it found that, "King's primary goal was to ensure that his treatment complied with the constitution. The structural terms of the decree may serve that goal by keeping DOC, allegedly the offending actor, out of DMH's province." *Id.*

Despite the clear conflict between Chapter 489 and the Consent Decree, the First Circuit nonetheless concluded that the enactment of Chapter 489 was a significant change in law under *Rufo*. *In its opinion, the First Circuit did not even mention, much less address, the Supremacy Clause issue presented to it in the petitioners' brief and during oral argument, and it ignored this Court's rulings in Cooper v. Aaron and Washington v. Washington State.*[9]

The net result is that the First Circuit has now held that a state can thwart a federal court order by subsequently enacting a statute modifying or vitiating the order.[10] This is a dangerous precedent that conflicts with the Court's decisions and fundamental principles of our constitutional order. This patently erroneous decision must be reversed.[11]

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9 In *Rufo*, this Court indicated that only a significant change in federal law will be sufficient to modify a federal consent decree. *Rufo*, 502 U.S. at 388, and cases cited therein.

10 The First Circuit's decision also flies in the face of settled principles of contract interpretation. A consent decree is, at least in part, a contract between or among parties as well as a binding court order. It is well-settled under contract law that a party will not be excused from performance if that party contributed to the event which purportedly negated compliance. *See Lowenschuss v. Kane*, 520 F.2d 255, 265 (2nd Cir. 1975); Restatement (Second) of Contracts §261 (1981). Here, the respondents lobbied to have Chapter 489 passed as legislation because they hoped to avoid their responsibilities under the Consent Decree. This should not be allowed.

11 It should be clear that the constitutionality of Chapter 489 was not at issue below, and is not raised here. The only issue raised here is whether Chapter 489 is a significant change in law under *Rufo*. The petitioners explicitly reserve the right to challenge the constitutionality of Chapter 489 in separate proceedings.

II. DISREGARDING THIS COURT'S HOLDING IN *RUFO*, THE FIRST CIRCUIT IMPROPERLY CONSIDERED ISSUES OF FEDERALISM IN DETERMINING WHETHER THE MASSACHUSETTS STATUTE CONSTITUTED A "SIGNIFICANT CHANGE IN LAW."

The First Circuit's holding also directly conflicts with controlling precedent of this Court by giving improper deference to the Commonwealth of Massachusetts' desire to give DOC control of the Treatment Center. For instance, the First Circuit took pains to recognize the Massachusetts legislature's judgment about which state agency should run the Treatment Center, and noted that the enactment of Chapter 489, "no longer gives DMH any role to play." (App. 11). The First Circuit then explicitly concluded that, "*[i]n light of these federalism concerns*, we think there has certainly been a 'significant change in law' within the meaning of *Rufo*..." *Id.* at 13 (emphasis added).

In short, the First Circuit clearly gave deference to concerns of the state in deciding whether there has been a "significant change in law" under the first prong of *Rufo*. Such deference, however, was expressly precluded by this Court's holding in *Rufo* itself. As this Court stated, "the moving party [first] bears the burden of establishing that a significant change in circumstances warrants modification of a consent decree. *No deference is involved in this threshold inquiry.*" *Rufo*, 502 U.S. at 392 n.14 (emphasis added).

It is only *after* a party satisfies its burden under this "threshold inquiry" that issues of federalism become relevant in assessing whether the modification is suitably tailored to the changed circumstances. *Id* at 383, 392 n.14. The First Circuit's contrary approach places unwarranted emphasis on "federalism concerns" and converts the *Rufo* standard from a discrete two step process to a "nuanced" approach overtly biased towards giving states free reign to modify federal consent decrees based on federal constitutional rights. (App. 9).

Thus, The First Circuit's blatant disregard of controlling authority from this Court must be promptly reversed. The supremacy of federal consent decrees would quickly become chimerical if federal courts blithely deferred to states' concerns or interests in deciding even whether a change in law (or fact) had occurred.[12]

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12 The First Circuit's reliance on its own decision in *Williams v. Lesiak*, 822 F.2d 1223 (1st. Cir. 1987) is inapposite. First, *Lesiak* merely suggests that an inquiry into principles of federalism is required only when the conflict between the provisions of a state statute and a federal court order is "less than clear." *Id.* at 1228. In this case, the conflict between the Consent Decree and subsequently enacted Chapter 489 could hardly be more clear or direct. The Consent Decree provides that DMH, not DOC, should control the Center, and the state statute directs the reverse. Second, *Lesiak* was decided prior to Rufo and before this Court explicitly held that issues of federalism are not to be considered in deciding the "threshold inquiry" under the standard for modification of a consent decree.

III. THE FIRST CIRCUIT'S DECISION IS BASED ON THE ERRONEOUS LEGAL PREMISE THAT DMH CONTROL OF THE TREATMENT CENTER ONLY COULD HAVE BEEN INCLUDED IN THE CONSENT DECREE BECAUSE EXISTING STATE LAW STRUCTURED THE TREATMENT CENTER IN THE SAME WAY.

The First Circuit's conclusion that the enactment of Chapter 489 is a significant change in law is based in part on the premise that it was only legally possible to grant DMH control of the Treatment Center because Massachusetts law already structured that facility in the same way. (App. 8, 10). As a matter of law, however, this premise is completely erroneous.[13]

As this Court has repeatedly recognized, federal courts may impose duties and obligations on states that are not based on state law, and that are actually directly contrary to existing state law. *See e.g., Washington v. Washington state Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 695 (1978) (federal court can order state agency to prepare rules implementing federal court's order even if state law withholds from the agency the power to do so); *North Carolina State Board of Education v. Swann*, 402 U.S. 43, 45-46 (1971) (invalidating state statute -- "state policy must give way when it operates to hinder vindication of federal constitutional guarantees."); *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 232-33 (1964) (emphasizing that federal courts have broad powers to vindicate federally guaranteed rights -- district court could order county officials to provide school financing, and indicating that the court could even order the county to levy taxes).

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13 Chapter 123A, as it existed in 1974, provided that DMH had control over treatment and rehabilitation of patients at the Treatment Center. The First Circuit concluded that the terms granting DMH control could only have been included in the Consent Decree "because Massachusetts law already structured the Treatment Center in the same way." (App. 8).

This Court also has found that parties to a consent decree may agree to all that a court may order and more. *See Rufo,* 502 U.S. at 389 (consent decree may require one party to do more than required by the Constitution, and "more than a court would have ordered absent the settlement"); *Suter v. Artist M.*, 503 U.S. 347, 354 n.6 (1992) ("parties may agree to provisions in a consent decree which exceed the requirements of federal law"); *Local Number 93, Ass'n of Firefighters v. City of Cleveland,* 478 U.S. 501, 525 (1986) (consent decree may grant "broader relief than the court could have awarded after a trial") (citations omitted).

As a result, if M.G.L. c. 123A had been silent or ambiguous about which state agency controlled the Treatment Center, nothing would have prevented the parties from entering into a consent decree to clarify whether DOC or DMH should exercise control of the facility. That would have been an entirely permissible agreement and one that the district court could have readily implemented. Indeed, consent decrees implementing entirely *new* administrative structures are routinely approved by courts. *See e.g., Hutto v. Finney,* 437 U.S. 678, 687 (1977) (district court had "ample authority" to fashion relief for constitutional violations by prison officials, including implementation of new policies); *Duran v. Carruthers,* 678 F. Supp. 839, 841 n.4 (D.N.M 1988) (implementing policy and procedures for practices at penitentiary, including correspondence, public and attorney visitation, food service, inmate activity, medical care, mental health care, and staffing and training, all relating to vindication of federal constitutional rights); *Coalition of Black Leadership v. Cianci*, 570 F.2d 12, 13 (1st Cir. 1978) (affirming entire procedure through which citizen complaints against police officers are filed, investigated and resolved).

In short, it is well established that a federal court may order appropriate relief to vindicate federal constitutional rights regardless of existing state law. The First Circuit's decision, resting as it does on a fundamental misunderstanding of the governing law, should be reversed.[14]

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14 There are two relevant restrictions to the relief available in a consent decree. First, the relief agreed to in the consent decree cannot be inconsistent with or contrary to the statutory or common law grounds for relief asserted in the complaint. *Firefighters*, 478 U.S. at 526 (relief may be afforded so long as it does not violate or conflict with statute upon which complaint was based). Here, there is nothing inconsistent between the exclusively *federal* claims asserted in the Amended Complaint and the remedy afforded by the Consent Decree. Second, the relief afforded must bear some relation to the rights that the Consent Decree is intended to enforce. *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117, 1125 (D.C. Cir. 1983). In 1974, the district court properly considered and entered the provisions requiring DMH control as a sound and reasonable means of protecting the patients' constitutional rights from infringement by DOC.

IV. THIS COURT SHOULD ALSO REVIEW THE FIRST CIRCUIT'S ERRONEOUS DECISION IN ORDER TO RESOLVE AN IMPORTANT QUESTION OF LAW AND PREVENT A CHILLING EFFECT ON THE USE OF CONSENT DECREES THROUGHOUT THE CIRCUITS.

The First Circuit's erroneous decision raises a vital question of constitutional law that has not been conclusively decided by this Court and it threatens to curtail the prominence of consent decrees in modern litigation. First, this Court has not reviewed the standard for modification of consent decrees since *Rufo*. This case affords the Court the opportunity to clarify whether, under the first prong of *Rufo*, a state statute purporting to modify a federal consent decree constitutes a significant change in law. A decision in this area would not be limited in effect to institutional reform litigation, but would apply to all cases resolved by consent decrees.

Second, the First Circuit's opinion, if left unreviewed, will have a chilling effect on the settlement of cases by consent decrees. The First Circuit's decision now allows state, county and municipal litigants to avoid their obligations under a consent decree by enacting contrary legislation and subsequently modifying the decree. Faced with this troubling prospect, plaintiffs opposing such government entities will be reluctant to settle their cases by entering into a consent decree. The First Circuit's opinion is particularly disturbing in light of the general expansion of litigation in the past forty years, especially institutional reform litigation. *Rufo*, 502 U.S. at 380. The consent decree is a useful tool for preserving scarce judicial resources and saves both plaintiffs and defendants the time and expense of protracted litigation. This Court should review and reverse the First Circuit's improvident decision to undermine the importance of consent decrees.

CONCLUSION

For all the reasons set forth above, the petitioners respectfully pray that the Court grant petitioners' Writ of Certiorari, and that the Court reverse the judgment of the Court of Appeals for the First Circuit.

Respectfully submitted,

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